

IP 04-0188-CR 1 T/F USA v Hoagland  
Magistrate Kennard P. Foster

Signed on 1/4/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

USA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
HOAGLAND, CHERYL,	)	CAUSE NO. IP04-0188-CR-01-T/F
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. IP 04-188-CR-01 (T/F)
	)	
CHERYL HOAGLAND,	)	
	)	
Defendant.	)	

**AMENDED**  
**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**  
*[due to scrivener's error]*

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on October 5, 2005 and December 20, 2005, designating the Magistrate Judge to conduct a hearing on the Petitions for Summons or Warrant for Offender Under Supervision filed with the Court on October 5, 2005 and December 14, 2005, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). Proceedings were held on October 13, 2005, December 2, 2005, December 21, 2005 and December 30, 2005, in accordance with Title 18 U.S.C. §3583 and Rule 32.1 of the *Federal Rules of Criminal Procedure*. At the proceedings held October 13, 2005, December 21, 2005 and December 30, 2005, Ms. Hoagland appeared in person and with her appointed counsel, Jim McKinley. On October 13, 2005, the government appeared by Steve Debrot, Assistant United States Attorney, for J. P. Hanlon, Assistant United States Attorney. J. P. Hanlon, Assistant United States Attorney, appeared for the government on December 2, 2005, December 21, 2005 and December 30, 2005. Dwight Wharton, U. S. Parole and Probation officer,

appeared and participated on October 13, 2005, December 2, 2005 and December 21, 2005. On December 30, 2005, Robert Akers, U. S. Parole and Probation officer, for Dwight Wharton, U. S. Parole and Probation officer, appeared and participated.

On October 13, 2005, the Court conducted the following procedures in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Jim McKinley, Office of Indiana Federal Defender, was appointed to represent Ms. Hoagland in regard to the pending Petition for Revocation of Supervised Release, filed October 5, 2005.

2. A copy of that Petition for Revocation of Supervised Release was provided to Ms. Hoagland and her counsel who informed the Court that they had read and understood the specifications of violation and waived further reading thereof.

3. Ms. Hoagland was advised of her right to a preliminary hearing and its purpose in regard to the alleged specified violations of her supervised release contained in the pending October 5, 2005 Petition.

4. Ms. Hoagland was informed she would have a right to question witnesses against her at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Ms. Hoagland was informed she had the opportunity to appear at the preliminary hearing and present evidence on her own behalf.

6. Ms. Hoagland was informed that if the preliminary hearing resulted in a finding of probable cause that Ms. Hoagland had violated an alleged condition or conditions of her supervised release set forth in the Petition, she would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on October 5, 2005.

7. Mr. McKinley stated that Cheryl Hoagland desired to waive the preliminary examination and proceed to the revocation phase of the proceedings this date. Ms. Hoagland then waived the preliminary hearing in writing and was held to answer.

8. Ms. Hoagland, by counsel, stipulated that she committed the violations of specifications as set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed October 5, 2005, described as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p><b>The defendant shall reside at the Volunteers of America Community Corrections Center for up to 180 days, and shall observe the rules of that facility.</b></p> <p>On March 21, 2005, Ms. Hoagland's conditions were modified as stated above due to her failure to report to the probation officer, failure to answer truthfully all inquires by the probation officer, failure to participate in substance abuse treatment and testing, and illegal drug use/possession. Please see Petition for Warrant dated 2/14/05, Supplemental Petition for Warrant dated 3/7/05, and Report on Offender dated 5/18/05. She surrendered to Volunteers of America (VOA) on April 21, 2005, and her projected release date is October 17, 2005.</p> <p>The defendant has been employed as a server at Applebee's throughout her residential placement. It is noted the vast majority of her income is derived from tips. A standard rule of VOA requires all residents to pay a subsistence fee of 25% of their gross income. Ms. Hoagland's actual subsistence amount is based on her paystubs which include wages and tips. On August 25, 2005, the defendant's case manager spoke with her about her subsistence arrearage which was in excess of \$700. The defendant stated she was saving money for her apartment in anticipation of her release from VOA. It was explained she was responsible for subsistence per facility rules and she was instructed to satisfy the arrearage by August 29, 2005. Ms. Hoagland indicated she needed to speak with her boyfriend about the issue. On September 7, 2005, she was again confronted because the arrearage had not been satisfied and was told she was in violation of facility rules. On September 22, 2005, a residential manager informed the defendant a payment of \$500 was due immediately.</p>

She stated she would turn in her tips for the day which was only \$30. Ms. Hoagland stated that was all she could pay. As of September 29, 2005, she owes \$1,205.61 in subsistence fees. On that same date, an Incident Report was filed that contains the above information.

On September 30, 2005, the probation officer contacted Ms. Hoagland and instructed her to satisfy the arrearage by October 4, 2005, or the Court would be advised of her violation of facility rules. She initially said arrangements were made with VOA staff about five weeks ago to satisfy the arrearage via payments after her release date. When advised her claims were not consistent with the September 29, 2005, Incident Report, the defendant stated she did not have the money.

The proceedings were then adjourned pending disposition which proceedings were set for December 2, 2005 at 10:30 A.M.

On December 2, 2005, the defendant, Cheryl Hoagland, did not appear and a bench warrant was issued for her arrest.

On December 14, 2005, a Petition for Warrant or Summons for Offender Under Supervision was filed in this cause. On December 20, 2005, the Honorable John Daniel Tinder issued an Order, designating the undersigned United States Magistrate Judge to conduct hearings on this Petition on the defendant, and to submit to Judge Tinder proposed findings of act and recommendations for disposition.

On December 21, 2005, the following proceedings were held:

1. The defendant appeared in person and with her court-appointed counsel, Jim McKinley.
2. A copy of the December 14, 2005 Petition for Revocation of Supervised Release was provided to Ms. Hoagland and her counsel who informed the Court that they had read and understood the specifications of each alleged violation and waived further reading thereof.
3. Ms. Hoagland was advised of her right to a preliminary hearing and its purpose in regard to the alleged specified violations of her supervised release contained in the pending Petitions.

2. Ms. Hoagland was informed she would have a right to question witnesses against her at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

3. Ms. Hoagland was informed she had the opportunity to appear at the preliminary hearing and present evidence on her own behalf.

4. Ms. Hoagland was informed that if the preliminary hearing resulted in a finding of probable cause that Ms. Hoagland had violated the alleged condition or conditions of supervised release set forth in the Petitions, she would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation on October 5, 2005 and December 20, 2005.

5. Ms. Hoagland stated her readiness to waive the preliminary hearing regarding the December 14, 2005 Petition under consideration. Ms. Hoagland then waived, in writing, the preliminary hearing and she was held to answer.

6. Mr. McKinley stated that Cheryl Hoagland would stipulate there is a basis in fact to hold her on the specifications of violation of supervised release set forth in the Petitions.

The parties stipulated the following in open Court:

(1) Ms. Hoagland and the government agreed they were ready to proceed to disposition on the pending Petitions to REVOKE Ms. Hoagland's supervised release in open Court this date.

(2) Ms. Hoagland admitted that she committed the violations of specifications set forth in the Petition to Revoke Supervised Release, filed with the Court on December 14, 2005, as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
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- 1           **The defendant shall participate in a program of testing and/or treatment for substance abuse and shall pay a portion of the fees of treatment as directed by the probation officer.**

On March 21, 2005, Ms. Hoagland's conditions were modified to include halfway house placement due to her failure to report to the probation officer, failure to answer truthfully all inquiries by the probation officer, failure to participate in substance abuse treatment and testing, and illegal drug use/possession. Please see Petition for Warrant dated 2/14/05, Supplemental Petition for Warrant dated 3/7/05, and Report on Offender dated 5/18/05. On October 13, 2005, a violation hearing was held due to the defendant's failure to satisfy the subsistence obligation while residing at the Volunteers of America (VOA). Please see Petition for Summons dated 10/5/05. A compliance hearing was scheduled for December 2, 2005, and the Court instructed her to satisfy the subsistence arrearage by that date. Ms. Hoagland completed her residential placement term and was released from VOA on October 17, 2005.

Since the defendant's release from residential placement, she failed to report for random urinalysis collection at VOA on the following dates: 10/27/05; 11/26/05; 11/30/05; and 12/6/05. In addition, Ms. Hoagland submitted a dilute urine specimen on 11/8/05. Dilute specimens prevent laboratory equipment from determining whether or not drug metabolites are present in urine.

- 2           **The defendant shall reside at the Volunteers of America Community Corrections Center for up to 180 days, and shall observe the rules of that facility.**

Ms. Hoagland failed make any payments toward her subsistence arrearage following her release from VOA, thereby violating the rules of that facility. It should be noted the defendant failed to appear for the December 2, 2005, compliance hearing and a bench warrant was issued for her arrest.

- (3) It is also noted by the Magistrate Judge that the defendant tested positive for cocaine use on December 21, 2005.

- (4) Ms. Hoagland has a relevant criminal history category of I.. See, U.S.S.G.

§7B1.4(a).

(5) The most serious grade of violation committed by Ms. Hoagland constitutes a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).

(6) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Ms. Hoagland is 3 to 9 months.

(7) The parties agree that the appropriate disposition of the case would be revocation of Ms. Hoagland's supervised release and that she be sentenced to the custody of the Attorney General or his designee for a period of 8 months. Further, upon release from confinement, Ms. Hoagland will not be subject to supervised release.

The Magistrate Judge informed the defendant and the parties' respective counsel that the Magistrate Judge would accept the parties' stipulation.

7. The Court then placed Ms. Hoagland under oath and inquired directly of her whether she admitted committing violations of supervised release contained in the Petitions. Ms. Hoagland admitted the violations.

8. The defendant and her counsel argued for self-surrender. The government objected. The Magistrate Judge heard argument from both attorneys. The Magistrate Judge denied the same.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Cheryl Hoagland, violated the above-delineated conditions in both Petitions.

Ms. Hoagland's supervised release is therefore **REVOKED** and she is sentenced to the custody of the Attorney General or his designee for a period of 8 months. The service of the



sentence shall begin immediately. At the conclusion of Ms. Hoagland's term of confinement, she will not be subject to supervised release.

Counsel for the parties and Ms. Hoagland stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

**WHEREFORE**, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Ms. Hoagland's supervised release.

**IT IS SO RECOMMENDED** this 4<sup>th</sup> day of January, 2006.

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Kennard P. Foster, Magistrate Judge  
United States District Court

Distribution:

J. P. Hanlon,  
Assistant United States Attorney  
10 West Market Street, #2100  
Indianapolis, IN 46204

James McKinley,  
Office of Indiana Federal Community Defender  
111 Monument Circle, #752  
Indianapolis, IN 46204

U. S. Parole and Probation

U. S. Marshal Service